EX PARTE OR LATE FILED

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of	)	
	)	
Tariffs Implementing	)	CC Docket No. 97-250
Access Charge Reform	)	

REPLY OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC), on behalf of Southwestern Bell Telephone Company (SWBT), Pacific Bell, and Nevada Bell, (collectively, the SBC Companies) and pursuant to Section 1.106 of the rules of the Federal Communications Commission (Commission), hereby replies to the opposition filed by MCI Telecommunications Corporation (MCI) against SBC's Petition for Reconsideration (Petition) of the Memorandum Opinion and Order (MO&O) released June 1, 1998 in the above-styled matter.

As a threshold matter, MCI implicitly admits that SBC's petition is meritorious since MCI does not dispute that the Commission's action constituted a new "information collection" that must have Office of Management and Budget (OMB) approval before effectiveness. While MCI disputes the fact that the Commission's action constituted a new definition of "non-primary lines," it does not address the ramifications of the Commission's requirement that the SBC Companies begin collecting new information on their subscribers (information which had not previously been required to be reported pursuant to a valid OMB authorization.) Since no OMB authorization existed at the time the Commission required the tariffs to be filed, the collection of the information on the non-primary line subscribers cannot be mandated (either to force a refund or to bill the non-primary line subscribers in the current tariff.) This conclusion is apparently

beyond dispute since it has not been addressed by MCI or any other party.[1]

I. THE MO&O'S RETROACTIVE DEFINITION OF "NON-PRIMARY" LINES MUST BE REVERSED.

In short, the Commission did not tell Pacific how to count non-primary lines for the December 1997 tariff filing. Pacific was required to make its best guess, and did so reasonably. The MO&O now states that Pacific guessed wrong. If the MO&O had just stated that the new definition now revealed by the MO&O would be used only on a going-forward basis, that would be bad enough (given the deficiencies detailed in SBC's Petition). But the MO&O takes the further egregious step of penalizing Pacific for not having guessed right by ordering a refund based on the new definition, while providing interexchange carriers (IXCs) an unwarranted windfall (as described in greater detail in Section IV).

MCI asserts that the MO&O did not adopt a new definition of "non-primary" lines, "but simply acted pursuant to its well-established authority to make interpretations of its rules and orders in a tariff investigation."[2] MCI claims that the Commission's action in the MO&O, in determining whether Pacific's non-primary line definition was reasonable and applied in a reasonable manner, is different than the activity of having the Commission provide its own new definition.

MCI notes a distinction without a real difference. The MO&O's action now de facto defines "non-primary" lines retroactively in the face of a pending rulemaking proceeding to do the same. Pacific is being penalized for not meeting the Commission's expectations of what a

[1] Likewise, the remainder of the IXC industry, by choosing not to oppose SBC's Petition, shows no objection to SBC's claim on this or any of SBC's other points.

[2] MCI at p. 2 (footnote omitted).

proper definition of non-primary lines should be (even though affected LECs were imploring the Commission to define "non-primary" lines before they were required to implement the tariff changes), and is thus being told, (however vaguely) what a proper definition should now be. Pacific now has some guidance (albeit not a formal decision in CC Docket No. 97-181) to determine how non-primary lines should be defined in the future.[3]

As MCI admits, at the time of the tariff filings, "the Commission had not yet adopted a definition of nonprimary lines...."[4] Further, not only had the Commission not yet adopted a formal definition of non-primary lines, it provided virtually no guidance as to the proper range of definitions. Pacific and all other local exchange carriers (LECs) were merely told to use their own judgment and effort to implement a proper definition and application. Not only had the Commission not adopted a definition of non-primary lines at the time of the tariff filing (even though the Access Charge Reform Order had assured the industry that the definition would be issued in time),[5] it still has not done so. The lack of written guidance is crucial here. The LECs were informed by conference call and never in writing that each of them should employ their own definitions. Given the complete lack of guidance on how to define non-primary lines, Pacific's definition must, by default, be found reasonable, at least as to the retroactive period.

MCI claims that Pacific's practice "effectively nullified the Access Reform Order's

---

[3] The process of having the Commission define a term in a tariff proceeding is always problematic. The parties to the official rulemaking docket (CC Docket No. 97-181) may not be the same as those in the tariff proceeding.

[4] MCI at p. 3.

[5] Access Charge Reform 12 FCC Rcd 15982 (1997), at para. 83.

primary/nonprimary line distinction."[6] MCI, however, completely fails to recognize the plain language of the Access Charge Reform Order. The Access Charge Reform Order states that it is: "not defining 'primary' or 'non-primary' lines in this Order."[7] Without a "definition" the "distinction" cited by MCI cannot be made.[8]

II. THE COMMISSION'S PRESCRIPTION WAS UNREASONABLE.

MCI asserts that the MO&O's resort to public data sources was reasonable since the Commission did not have access to Pacific's billing records. MCI thus implies that Pacific's billing records would have revealed the same figures as the Commission's public data sources, had the Commission had access to the Pacific billing records.

MCI again misses the point. Pacific's billing records at the time of the tariff filing did not have the information to determine a percentage of non-primary lines similar to that of the public data sources. MCI, like the MO&O, ignores the fact that Pacific's billing records, at the time of the tariff filing, could not reliably discern any more non-primary lines than those used in the filing. MCI makes reference to the public statements of Pacific Bell, as well as the figures in the public data sources. Nevertheless, the definition of "additional" lines used in these statements and data sources may not be the same as that intended by the Commission for "non-

---

[6] MCI at p. 3.

[7] Access Charge Reform Order, para. 83.

[8] Also noteworthy is the fact that the LECs were given less than two months from the time of the October 27, 1997 conference call directing them to implement their own definition in the tariff filing, as compared to the five and one half months the Commission has taken to determine that Pacific's definition was unreasonable. If the definition used by Pacific Bell was as unreasonable as the MO&O determined, certainly that determination should have been provided to Pacific Bell much sooner for implementation. If, on the other hand, it truly took five and one half months for the Commission to determine that Pacific Bell's definition was unreasonable, Pacific Bell should be given at least five and one half months to implement any definition change.

primary" line.[9] Thus, the definitions used by the public statement and the public data sources are irrelevant and cannot be used for the harsh remedy of a prescription.

The standard company (Pacific Bell) definition and count of "additional" lines (ADLs) (as used in the Pacific Bell public statement cited in the MO&O) come from PARIS (Product and Revenue Information System). It is pulled from PARIS as a distinct element code. PARIS information is populated as a direct result of a field identifier (FID) that is placed alongside a normal access line USOC order. The FID is placed on incoming orders by the PREMISE system, which defines an ADL as "more than one line into a customer premises."

The ADL FID was developed many years before the Commission ever conceived of the idea of non-primary lines. The ADL FID merely indicates that there is another line into a premise.[10] The ADL FID is insensitive to the specifics of the other line, it is only dependent on its existence. The ADL FID is not dependent on the customer's billing name (consolidated or separate bills) or the relationship of the parties in the premise (roommates, fraternity or sorority members, boarders, siblings, parents and children, multiple families, etc.)

California demographics indicate a large number of multiple households in single family dwellings:

- High number of families in California that live together.
- High housing costs, so people have roommates.

---

[9] Pacific cannot say whether the definition used by these data sources for "additional" line matches the Commission's definition of "non-primary" line since the Commission has not yet formally defined that term. Pacific assumes that the eventual definition of "non-primary" line will be similar to that implied by the MO&O.

[10] The ADL FID is used to alert the technician when installing service. The ADL FID indicates to the installer that there is another line somewhere in the premise and that it should not be disconnected when establishing service for the additional line.

- High number of colleges with roommate and boarder situations.

Thus, the ADL FID would count these subscribers as ADLs, but the definition of "non-primary" line used by Pacific Bell's billing system would not count them as "non-primary."[11] Pacific Bell's treatment is consistent with the Commission's decision in paragraph 33 of the MO&O.

As pointed out in SBC's Petition, the non-primary line count in Pacific Bell was lower than the number anticipated by the MO&O because SBC's definition only considers a line to be non-primary if it is a line "billed on" the customer record, i.e., a multi-line residential amount.

Since a formal definition has not yet been adopted by the Commission, multiple proposed definitions have been found reasonable.[12] There should be no surprise that these multiple definitions provide varying percentages (from LEC to LEC) of non-primary lines. It is unreasonable for the MO&O to hold Pacific Bell's definition to be unreasonable by finding the percentage resulting from it to be too low, when the MO&O's "studies" are made up of the various percentages (from the other regions that used various definitions). Thus, the "evidence" cited by the order is irrelevant[13] and the refund cannot stand.

---

[11] In the following situations, an ADL FID would be populated but the line would not currently be classified as a non-primary line for billing purposes:

- A second line is ordered for Jane Customer's house by her adult son, John Customer, who lives with her. The bill for the second line is in John's name and he will pay the bill.

- Jane Customer calls to order a line for herself. She lives with Mary Customer, a roommate, who already has a line to the house. Jane will get a separate bill and pay the bill herself.

[12] The MO&O itself (in paras. 33-39) notes that the various LECs adopted varying definitions of "non-primary" lines.

[13] Clearly, as noted in SBC's Petition, had the "evidence" been placed into the record at a time that would have allowed SBC to respond, the Commission would have been made aware of

III. THE REFUND IS UNWARRANTED.

MCI claims that "[b]ecause Pacific clearly overcharged the IXCs by a substantial amount, the Commission should reject SBC's request for reconsideration of the refund requirement."[14] MCI, however, agrees that at least a portion of the "overcharge" was "offset by other rates."[15] MCI further states that SBC's proposal to offset the refund by estimating the amount of presubscribed interexchange charges (PICCs) that each IXCs would have paid had the Commission's new definition been in place, is unreasonable.

No refund is warranted in this case. As noted in the Petition, SBC gained no financial benefit through the implementation of its own definition of non-primary lines. The refund constitutes an unwarranted windfall to IXCs, even though these same IXCs benefited from the definition implemented by Pacific Bell. The MO&O effectively allows the IXCs to have it both ways. The IXCs benefited by not paying as many non-primary PICCs as they would have under the Commission's new definition, but they also are to be refunded the charges for the multiline business PICCs which would have been lower under the Commission's definition.

In any event, IXCs should not be entitled to any refund unless they can positively demonstrate that they will refund to end users their share of those charges they collected from end users for PICC recovery. Otherwise, the Commission is only encouraging another variation of IXC practices that the Commission has been harshly critical of – failing to pass-on lower access rates to end users. If Pacific Bell "undercharged" end users by billing a primary line EUCL and "overcharged" IXCs through PICCs, (which have been passed through by IXCs to

---

the irrelevance of that data.

[14] MCI at p. 7.

[15] MCI at p. 6.

end users), then IXCs have suffered no financial consequence and should only be entitled to a refund if they make a refund to those end users who have allegedly been overcharged. Any LEC refund without this step will simply constitute a windfall for the IXC at the expense of the end user. Because Pacific did not benefit financially from the implementation of its definition, no refund is warranted.

At a minimum, an offset must be imposed. SBC's proposed approach to an offset, as well as others that may be conceived, must be allowed. While the MO&O states that it is not possible "to determine the amount any particular IXC saved,"[16] a reasonable estimate can be determined. If a reasonable estimate of the amount any particular IXC saved can be determined, it must be allowed as an offset. To do otherwise would unjustly enrich IXCs and would unreasonably penalize Pacific.

[16] MO&O at para. 179.

IV. CONCLUSION

For the foregoing reasons, SBC respectfully requests that the Commission reconsider and reverse the MO&O in the manner described above.

Respectfully submitted,

SBC COMMUNICATIONS INC.
SOUTHWESTERN BELL TELEPHONE COMPANY
PACIFIC BELL
NEVADA BELL

By _____

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Thomas A. Pajda
One Bell Plaza, Room 3003
Dallas, Texas 75202
214-464-5307

July 24, 1998

Their Attorneys

Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing, "Reply Comments of SBC Communications Inc." in CC Docket No. 97-250 has been served on July 24, 1998, to the Parties of Record.

Mary Ann Morris

July 24, 1998

BELLSOUTH CORPORATION & BELLSOUTH
TELECOMMUNICATIONS INC
M ROBERT SUTHERLAND
4300 SOUTHERN BELL CENTER
675 W PEACHTREE STREET NE
ATLANTA GA 30375

AMERITECH SERVICES INC
2000 WEST AMERITECH CENTER DRIVE
LEGAL DEPARTMENT
HOFFMAN ESTATES IL 60196-1025

BELLSOUTH CORPORATION
1155 PEACHTREE ST NE
SUITE 1800
ATLANTA GA 30367-6000

THE BELL ATLANTIC TELEPHONE COMPANY
1320 N COURT HOUSE ROAD
8TH FLOOR
ARLINGTON VA 22201

THE SOUTHERN NEW ENGLAND TELEPHONE
COMPANY
LINDA D HERSEMAN
227 CHURCH STREET
NEW HAVEN CT 06506

AMERITECH OPERATING COMPANIES
ITS ATTORNEYS
2000 WEST AMERITECH CENTER DRIVE
ROOM 4H94
HOFFMAN ESTATES IL 60196-1025

ROBERT B MCKENNA
DANA RASMUSSEN
US WEST COMMUNICATIONNS INC
1020 19TH STREET NW
SUITE 700
WASHINGTON DC 20036

MICHAEL J SHORTLEY III
ATTORNEY FOR FRONTIER COPORATION
180 SOUTH CLINTON AVENUE
ROCHESTER NY 14646

U S WEST INC
ROBERT B MCKENNA
RICHARD A KARRE
ATTORNEYS FOR U S WEST
SUITE 700
1020 19TH STREET NW
WASHINGTON DC 20036

ALIANT COMMUNICATIONS COMPANY
VINSON & ELKINS
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004-1008

GTE TELEPHONE OPERATING COMPANY
1850 M STREET NW
SUITE 1200
WASHINGTON DC 20036

CITIZENS UTILITIES COMPANY
RICHARD M TETTELBAUM
ASSOCIATE GENERAL COUNSEL
SUITE 500
1400 16TH STREEET NW
WASHINGTON DC 20036

RICHARD MCKENNA HQE03J36
GTE SERVICE CORPORATION
P O BOX 152092
IRVING TEXAS 75015-2092

M ROBERT SUTHERLAND
A KIRVEN GILBERT III
ATTORNEYS FOR BELLSOUTH CORPORATION
1155 PEACHTREET STREET NE
SUITE 1700
ATLANTA GA 30309-3610

DAVID C OLSON
CINNCINNATI BELL TELEPHONE COMPANY
201 E 5TH STREET
CINNCINNATI OH 45202

SECRETARY'S OFFICE
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW
ROOM 222
WASHINGTON DC 20554

MARK C ROSENBLUM
PETER H JACOBY
JUDY SELLO
AT&T CORPORATION
ROOM 3245I1
295 NORTH MAPLE AVENUE
BASKING RIDGE NJ 07920

SPRINT COMMUNICATIONS COMPANY LP
RICHARD JUHNKE
NORINA T MOY
1850 M STREET NW
SUITE 1110
WASHINGTON DC 20036

ITS INC
1231 20TH STREET NW
WASHINGTON DC 20036

JUDY NITSCHE
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW
ROOM 518
WASHINGTON DC 20554

JOHN SCOTT
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW
ROOM 518
WASHINGTON DC 20554

JOSE RODRIGUEZ
FEDERAL COMMUNICATIONS COMMISSION
ACCOUNTING AUDITS DIVISION
2000 L STREET NW
ROOM 812
WASHINGTON DC 20554

PEYTON WYNNS
FEDERAL COMMUNICATIONS COMMISSION
INDUSTRY ANALYSIS DIVISION
2033 M STREET NW
SUITE 500
WASHINGTON DC 20554

MCI TELECOMMUNICATIONS CORPORATION
ALAN BUZACOTT
REGULATORY ANALYST
1801 PENNSYLVANIA AVENUE NW
WASINGTON DC 20006

GENE C SCHAERR
SCOTT M BOHANNON
CARL D WASSERMAN
AT&T CORPORATION
1722 I STREET NW
WASHINGTON DC 20006

MARK C ROSENBLUM
PETER H JACOBY
JUDY SELLO
AT&T CORPORATION
ROOM 3245I1
295 NORTH MAPLE AVENUE
BASKING RIDGE NJ 07920

NANETTE S. EDWARDS
REGULATORY AFFAIRS MANAGER
ITC DELTACOM COMMUNICATIONS INC
700 BOULVEVARD SOUTH SUITE 101
HUNTSVILLE AL 35802

RUSSELL M BLAU
MORTON J POSNER
SWIDLER & BERLIN CHARTERED
3000 K STREET NW SUITE 300
WASHINGTON DC 20007

CHIEF
COMPETITIVE PRICING DIVISION
ROOM 518
1919 M STREET NW
WASHINGTON DC 20554